

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
David C. Boyd
Marshall Johnson
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Enbridge
Pipelines (Southern Lights) L.L.C. for a Route
Permit for the Southern Lights Crude Oil
Pipeline Project

ISSUE DATE: July 27, 2007

DOCKET NO. PL9/PPL-07-360

ORDER ACCEPTING APPLICATION,
INITIATING FULL REVIEW, REFERRING
TO OFFICE OF ADMINISTRATIVE
HEARINGS AND ORDER AND NOTICE OF
HEARING

PROCEDURAL HISTORY

On April 24, 2007, Enbridge Pipelines (Southern Lights) L.L.C. (Enbridge or the Company) filed an application for a pipeline route permit pursuant to Minn. Stat. § 216G.02 and the Pipeline Route Selection procedures in Minn. Rules, Parts 4415.0045 to 4415.0100 for its Southern Lights Crude Oil Pipeline Project.

On July 9, 2007, the Minnesota Department of Commerce's Energy Facility Permitting Staff (the Department) filed comments.

The Commission met on July 12, 2007 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

The Commission has jurisdiction over applications for route permits for the pipeline project at issue in this matter, under Minn. Stat. § 216G.02. Subdivision 2 of that statute states:

Subd. 2. **Prohibition.** A person may not construct a pipeline without a pipeline routing permit issued by the Environmental Quality Board¹ unless the pipeline is

¹ Prior to recently enacted energy legislation, the Commission had the responsibility and authority to issue certificates of need and the Environmental Quality Board (EQB) had the

exempted from the board's routing authority under this section or rules adopted under this section. A pipeline requiring a permit may only be constructed on a route designated by the board.

Consideration of the Company's Route Permit Application will proceed in accordance with the requirements of Minn. Stat. § 216G.02 and Minn. Rules, Chapters 1405 and 4415.

II. Substantial Completeness of the Filing

The Department filed comments on the completeness of the Company's April 24, 2007 application. The Department indicated that Enbridge has met the filing requirements for completeness.

No party asserted that Enbridge has not met the filing requirements for completeness.

Based on the Department's recommendation and its own review, the Commission finds that Enbridge has met the filing requirements for completeness.

III. Referral to Office of Administrative Hearings

The Commission finds that it cannot satisfactorily resolve all questions regarding the reasonableness of the proposed route on the basis of the Company's filing. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

The Administrative Law Judge assigned to this matter will conduct hearings as described in this Notice and submit a Report to the Commission.² Following receipt of the Administrative Law Judge's report, the Commission will proceed to make its final decision in accordance with Minn. Stat. Chapters 14 and 116C.³

IV. Administrative Law Judge

The Administrative Law Judge assigned to this case is Eric Lipman. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7601.

responsibility and authority to issue site or route permits. In 2005, the Minnesota Legislature transferred the EQB's siting and routing authority to the Commission and encouraged a certain level of combining of the two processes. See S.F. 1368 - 84th Legislative Session, Article 3, Section 17 and Minn. Stat. § 216B.243, subd. 4.

² Minn. Rules, Part 1405.2400.

³ Minn. Rules, Part 1405.2500.

V. Hearings

A. Prehearing Conference

A prehearing conference will be held in this case on Tuesday, August 7, 2007, at 1:00 p.m. in the Small Hearing Room at the offices of Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101. The prehearing conference will be held jointly with the prehearing conference scheduled for the Company's Certificate of Need proceeding for the Southern Lights Crude Oil Pipeline Project, Docket No. PL-9/CN-07-464, which also has been referred to the Office of Administrative Hearings (OAF) for a contested case proceeding.

Pursuant to Minn. Rules, Part 1405.1100, the purpose of the prehearing conference is to simplify the issues to be determined, to obtain stipulations to foundation for testimony or exhibits, to discuss schedules for hearings and other procedural events, and to resolve other matters that may be necessary or appropriate. Potential interveners, and other interested persons, may attend the prehearing conference.

The Administrative Law Judge may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the administrative law judge deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the Administrative Law Judge. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the Administrative Law Judge.

B. Public Hearing/Contested Case Hearing

A public hearing following the contested case format prescribed by Minnesota statutes⁴ and rules⁵ will be held in this matter. The hearing will include cross-examination by parties, questioning by interested persons, and direct testimony or comments from the public. Conduct of the hearing is addressed more fully below in Section VII (Procedural Outline), below.

Since this Order is transferring jurisdiction over this matter to the Office of Administrative Hearings for purposes of conducting the contested case proceeding, the date, time, and place of the public hearing or hearings will be determined by the Administrative Law Judge assigned to this matter by the Office of Administrative Hearings in light of the developing circumstances of this matter. This information will be duly noticed as required by applicable statute and rule.

VI. Public Participation

A. Right to Counsel and to Present Evidence

In these proceedings, parties may be represented by legal counsel, or by a person of their choice, or they may represent themselves. They have the right to present evidence, conduct cross-examination,

⁴ Minn. Stat. Chapter 14.

⁵ Minn. Rules, Chapter 1405.

and make written and oral argument. Under Minn. Rules, part 1405.1300, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

B. Public Adviser

The Commission has authorized the Department to name a public adviser for the project. The public adviser is someone who is available to answer questions from the public about the permitting process. In this role, the public adviser may not act as an advocate on behalf of any person. The Department has named Deborah Pile, Manager of the Department's Energy Facilities Permitting Unit, to serve as the Public Adviser for this project. Her address is Minnesota Department of Commerce, 85 - 7th Place East, Suite 500, St Paul, MN 55101-2198 and her phone number is 651-297-2375.

C. Commission's Representative; Advice Regarding Procedures

The Commission's representative in this matter is Bret Eknes, State Planning Director, Minnesota Public Utilities Commission, 121-7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201- 2236.

The member of the Attorney General's staff who may be contacted for advice on matters dealing with Commission procedures is Kari Zipko, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1408.

D. Availability of Materials

Interested persons may review all materials including all prefiled testimony at the Minnesota Department of Commerce, 85 - 7th Place East, Suite 500, St. Paul, MN 55101-2198 as soon as they have been filed. To arrange a viewing of these materials, interested persons may contact the Public Adviser, Deborah Pile, at the Minnesota Department of Commerce or by phone at 651-297-2375.

E. Parties, Persons, and Intervention

Currently, the only party to this case is the Applicant, Enbridge Pipelines (Southern Lights) L.L.C.⁶ The names and addresses of the persons designated to receive all notices on behalf of the Applicant are: Joel Kanvik, Senior Counsel, Enbridge Energy Company, Inc., 1100 Louisiana, Suite 3300, Houston, Texas 77002, (713)821-2110, Joel.kanvik@enbridge.com and Kevin Walli, Fryberger, Buchanan, Smith & Frederick, 332 Minnesota St., Suite W1260, St. Paul, Minnesota 55101, (651)221-1044, Kwalli@fryberger.com.

⁶ Minn. Rules, part 1405.0200, subp. 3 defines "party" as the applicant, persons proposing routes or sites which the board orders to be considered pursuant to Minnesota Statutes, chapter 116C and rules adopted thereunder, and persons granted permission to intervene pursuant to part 1405.0900. State agencies, participating department staff, and citizen committees appointed by the Commission must intervene to attain party status.

Other persons⁷ who wish to be granted permission by the Administrative Law Judge to intervene in this matter, must do so pursuant to Minn. Rules, Part 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition and Subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

The hearing process established under Minn. Rules Chapter 1405 is designed to facilitate public participation, and persons need not intervene as parties to participate. All public participants have significant procedural rights, including, but not limited to, the right to be present throughout the proceeding, to offer direct testimony in oral or written form, to question all persons who testify, and to submit comments to the Administrative Law Judge and the Commission.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another's petition for intervention within seven days of service of the petition, the rights to submit direct testimony and conduct cross-examination of other parties' witnesses in the first stage of any two-stage hearing conducted by the administrative law judge pursuant to Minn. Rules, Part 1405.1500, subp. 2, and the responsibilities to submit pre-filed testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minn. Rules, part 1405.0500, subp. 1, and is not intended to be comprehensive. Review Chapter 1405 to identify the scope of rights and authority to act given "persons" or restricted to "parties" under the various provisions of that Chapter.

VII. Issues to be Addressed

Parties shall specifically and thoroughly address the requirements of Minn. Stat., Chapter 216G and Minn. Rules, Chapter 4415.

The parties may also raise and address other issues relevant to the Company's proposed route.

VIII. Procedural Outline

A. Hearing Procedures; Applicable Rules; Availability

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 and Minn. Rules, parts 1405.0200 to 1405.2800. Regarding any issue on

⁷ Minn. Rules, part 1405.0200, subp. 4 defines "person" as an individual, partnership, joint venture, private or public corporation, association or society, firm, public service company, cooperative, political subdivision, municipal corporation, governmental unit or agency, public utility district, or any other entity, public or private, however organized.

which Chapter 1405 is silent, the provisions of Minn. Rules, parts 1400.5100 to 1400.8400 regarding contested cases shall apply and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association. Hearings may be recessed and reset by the Administrative Law Judge pursuant to Minn. Rules, parts 1405.1400 to 1405.2300.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

B. Accommodations for Disabilities; Interpreter Services

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

IX. Time Constraints

Commission rules require the Commission to make a final decision on a route permit application within nine months after the Commission's decision that an application is complete.⁸ That decision on completeness of the application is made in this Order. Under Commission rules, therefore, the Commission's final decision on a route permit application is due within nine months of July 27, 2007, the issue date of this Order.

The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of these time constraints.

X. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, apply to pipeline routing permit cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

⁸ This requirement is imposed by Minn. Rules, Part 4415.0045 - Application Procedures and Requirements. Minn. Stat. § 216E.03, subd. 9 requires the final decision within one year of within one year after the Commission's determination that an application is complete. According to the statute, the Commission may extend this time limit for up to three months for just cause or upon agreement of the applicant.

XI. *Ex Parte* Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission accepts the April 24, 2007 application of Enbridge Pipelines (Southern Lights) L.L.C. for a pipeline routing permit under the full permitting process authorizes the Department to initiate the full review process under Minnesota Rules Chapter 4415.
2. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
3. A prehearing conference shall be held on Tuesday, August 7, 2007 at 1:00 p.m. in the Small Hearing Room at the offices of Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101.
4. The date, time, and place of the public hearing will be set by the Administrative Law Judge and properly noticed in due course.
5. The Commission hereby approves the Department of Commerce's Energy Facility Permitting Staff's proposed budget.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651)201-2202 (voice), or 1-800-627-3529 (MN relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Application of Enbridge
Pipelines (Southern Lights) L.L.C. for a
Route Permit for the Southern Lights
Crude Oil Pipeline Project

MPUC Docket No. PL9/PPL-07-360

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Eric L. Lipman; Office of Administrative Hearings, Suite 1700, 100 Washington Square,
Minneapolis, Minnesota 55401; (612)-341-7601.

TO THE ADMINISTRATIVE LAW JUDGES:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____